TESTIMONY PRESENTED BEFORE THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

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Statement of Michael J. Brandi, Executive Director & General Counsel

Proposed Joint Resolution No. 3,
House Bill Nos. 6633 & 6634; Senate Bill Nos. 1119 & 1125
And commenting on House Bills 6290 & 6632 and Senate Bil 1120,
And strongly opposing Senate Bill 1126 and 1127and House Bill 6289

Good morning, Chairperson Musto and Chairperson Jutila, Ranking Members Senator McLachlan and Representative Hwang, and distinguished Committee members. I am Michael Brandi, Executive Director and General Counsel of the State Elections Enforcement Commission. I am honored to speak before this Committee this morning and I look forward to continuing to work with the Committee on elections legislation. Today I will be testifying on behalf of my Commission's legislative initiatives this session contained in House Bill Nos. 6633, 6634 and Senate Bill Nos. 1119 & 1125, and Proposed Joint Resolution No. 3. I will also address those bills which adjust funding sources to party committees and, finally, express my Commission's opposition to bills that allow special interest monies into the Citizens' Election Program and that decrease transparency right before elections. Thank you for this opportunity to testify.

The Commission's proposals this year seek to make life easier for treasurers and candidates, save critical funds for both the state and municipalities during this time of economic hardship and, ultimately, attempt to ensure the continued viability of the Citizens' Election Program in 2014 and the future.

H.B. 6634: An Act Establishing a Pilot Program for Municipal Campaign Finance Filings

The Commission's first proposal, House Bill 6634, seeks to create efficiencies and savings on the municipal level and increase transparency by creating a pilot program whereby the State Elections Enforcement Commission ("Elections Enforcement") will perform filing repository duties for the offices of up to 20 municipal town clerks. Presently, town clerks are the filing repository for all municipal campaign finance filings, including those for municipal candidates and referenda. This creates a heavy burden on clerks' offices. In addition, committees that file with the town clerks cannot file their statements electronically, which in turn leads to decreased disclosure to the public. The Commission will work cooperatively with town clerks to free up municipal resources by potentially taking over such duties statewide.

Under the program, treasurers for candidates in participating towns will be able to choose to file their statements electronically. It is important to note that under this pilot program, candidates will still be able to make paper filings in person at the town clerk's office or through the mail if

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they chose. The deadlines and filing procedures will not change and they will continue to be timely so long as they are postmarked by the deadline.

This program will increase efficiencies and create cost savings throughout the State. It will also dramatically increase public disclosure of local campaign filings as they will be available online for the first time, and it will increase consistency in compliance and support for local candidates. The proposal mandates a study of the pilot program's efficiencies to determine whether the Commission should assume these filing duties for all municipalities in the future.

H. B. 6633: An Act Concerning Campaign Finance Law and Prior Bad Acts

The Commission's second proposal places requirements on treasurers who are responsible for all monies going in and out of committees, and on candidates who receive public funds. Put simply, this bill will prevent those who have a recent history of theft and the most egregious violations of the campaign finance law – those who have been criminally prosecuted – from being entrusted as treasurers with committee dollars and, most importantly, with the public fisc. Similarly, the bill will impact the ability of candidates to receive public funds if they have been convicted of an egregious violation of election laws within the last eight years or a felony related to the candidate's public office.

There have been a number of instances where treasurers have stolen or misappropriated campaign funds. Notably, earlier this year, the treasurer of a 2008 state representative candidate committee, after a referral by the Commission to the Chief State's Attorney, was arrested and charged with stealing over $4,000 of public funds from the campaign representing 16% of the committee's total CEP grant. Shockingly, she was arrested the same week in a separate matter alleging she stole nearly $3,000 while acting as treasurer for a 2009 alderman candidate. Nothing in the current law would prevent this individual from again serving as campaign treasurer.

If passed, this bill will protect candidates and campaign contributors by barring from serving as treasurer those individuals who have, within the last eight years, been criminally convicted of a felony involving fraud, forgery, larceny, embezzlement, or bribery or criminally convicted of a violation of Title 9. We have isolated these felonies due to their severity – these crimes involve either theft of funds or a violation of the public trust.

This bill will also permit the Commission to order that certain individuals who have committed the most egregious campaign finance violations cannot serve as a committee treasurer going forward. The current law only permits the Commission to bar individuals from serving as treasurer for a period of four years after a hearing.

This bill will prevent those individuals who owe civil penalties to the Commission from registering as a new committee treasurer until such fines are paid. Of note, this does not include those who simply owe $100 late filing fees but instead applies only to fines assessed by the Commission after the opportunity for a public hearing.

As with the role of treasurer, recent events have demonstrated a need to add certain protections to the law with respect to the Citizens' Election Program. The most pronounced example of the need for this bill lies with a candidate who in 2012 received a public grant of over $80,000 despite having pled guilty in 2005 to various corruption and campaign finance felonies including accepting a $5,000 bribe, evading taxes, and misusing over $40,000 of campaign funds by making personal expenditures. The Commission awarded a public grant to this candidate because there was nothing barring his participation under current law. In January of this year, this same candidate was arrested again, this time for first degree larceny, five counts of illegal campaign practices, and tampering with a witness in connection with his submission of false documentation and straw contributions to the Commission as part of his grant application. If this bill or another like it is not passed then nothing would bar the candidate from further participation in the Program even in light of his alleged theft of grant funds from the state, and his previous corruption crimes.

If passed, this bill will require that candidates who want to participate in the CEP make certain certifications at the point of application. First, they must certify that they have not been criminally convicted of any election law violations within the last eight years or any felony involving fraud, forgery, larceny, embezzlement, or bribery. Also, they must certify that any fines assessed by the Commission against the candidate or his former committee have been paid. Again, this will not include the $100 mandatory late filing fees assessed for late filings but will only include fines assessed by the Commission after an opportunity for a hearing.

These controls will help to ensure the integrity of the Citizens' Election Fund by preventing future theft and misuse.

Senate Bill 1119: An Act Concerning the Citizens' Election Fund

Connecticut's landmark campaign reform, the Citizens' Election Program, is financed through the Citizens' Election Fund, a non-lapsing fund that receives most of its monies from the sale of abandoned property in the State of Connecticut's custody. Individuals, businesses, labor unions, candidate committees, party committees, political committees and entities of any other type may also contribute funds to the Citizens' Election Fund. The Program has no effect on the tax liability of Connecticut residents.

When the Citizens' Election Program was enacted, it was statutorily mandated that a certain amount is moved from the abandoned property fund into the CEP fund. Until recently these amounts were adequate to run the Program even in statewide years with high participation rates. The only uncertainty was whether there would be enough monies in the abandoned property fund to cover the amounts statutorily required to be transferred to the CEP.

The Program protected candidates who qualified from this uncertainty. It was done with what basically amounts to overdraft protection. If there are not enough monies available in the abandoned property fund to deposit the amount required by law into the CEP fund, then monies from another revenue source are used to ensure that an adequate amount is deposited into the CEP fund. Until recently this system worked well because the amount statutorily required to be transferred from the abandoned property fund to the CEP fund was adequate to run the Program

for both the statewide and General Assembly elections and any uncertainty in the amounts available in the abandoned property fund was covered by overdraft protection.

In 2011, this changed. The amount to be deposited into the CEP fund from the abandoned property fund was reduced annually by forty percent. As a result of these reductions, now not only do we need overdraft protection to ensure that there is enough in the abandoned property fund to cover the CEP grants, we also need overdraft protection to ensure that the amount that is supposedly available in the CEP fund will be adequate for the level of participation. We do not yet have this second type of overdraft protection.

This means that the ability of the CEP to make a grant to every candidate that qualifies for one in a statewide election year may be in jeopardy if there are multiple participating gubernatorial candidates. This bill seeks to address the very real danger by expanding the overdraft protections already contained in Section 9-750. Whereas now other funds are moved to cover shortages in the abandoned property fund, with this bill they can also be moved to cover shortages in the CEP fund.

The bill also removes language resulting in reduced grant amounts, as well as trigger language that was called into question by the Second Circuit's 2010 rulings in the Green Party litigation. It is necessary to make the program safe from constitutional challenge.

Senate Bill No. 1125: An Act Concerning Campaign Finance Filings and Making Technical and Conforming Changes to Campaign Finance Law

The Commission's final bill of the agenda today, Senate Bill 1125, makes several technical and conforming changes to the law necessitated by changes to the campaign finance law over the last few years. In addition, this bill reflects the Commission's continued efforts to streamline and simplify the filing regime. Finally, this bill makes some minimal changes clarifying the independent expenditure provisions.

First, this bill makes essential changes to the campaign finance filing calendars to assist treasurers and increase efficiencies by eliminating multiple reports due within a few days of each other. Under the current law, certain committees are required to submit filings within close proximity to other filings, sometimes resulting in a committee filing two reports in the same week. This results in a tremendous burden on treasurers with only minimal benefit to public disclosure. This proposal eliminates these successive filings and eases both the burden on committee treasurers and the processing cost for the state. In the same vein, this bill eliminates filings for candidates who are not eligible for the ballot and are no longer seeking election. The bill also assists treasurers by granting the Commission the ability to deviate from the mandatory late filing penalty if a committee took steps to ensure timely filing (i.e. paid for an overnight parcel service delivery or sent via certified mail well in advance of the deadline).

The bill also makes some simple but necessary technical changes to the political committee biennial registration regime created with Public Act 11-173 to create consistency with other sections of the law. This technical proposal will assist committees by, in most cases, placing the duty to update committee registrations with the most knowledgeable committee officer – the

treasurer – unless there has been a change in officer necessitating an appointment by the chairperson.

The bill makes a technical change to the "house party" exemption to the definition of expenditure. When the legislature amended the "house party" exemption in Public Act 11-48, it amended the exception to the definition of "contribution", but did not amend the parallel exception to the definition of "expenditure." This rectifies the problem.

In addition, the bill creates an exception to the definition of "contribution," permitting state central committees to set up a website or websites for the purpose of gathering online contributions for candidates for General Assembly and statewide office. This will help standardize the process of gathering online contributions so that it is compliant with the campaign finance law and regulations. This will also permit state central committees to raise online contributions for several party candidates simultaneously.

As for the independent expenditure provisions, the bill replaces the terms of art "contributors" and "contributions" in the attribution requirement with the terms "donors" and "donations," clarifying that a nonprofit entity making independent expenditures must list the top five "donors" making the five largest "donations" on its advertisements and communications. The bill also requires such nonprofit entities to identify the aggregate amount of funds donated by each such "top five" donor on its financial disclosure statements. In addition, the bill clarifies that pre-existing unincorporated groups such as PTOs are permitted to make expenditures for referendum advocacy or opposition.

Proposed Joint Resolution No. 3 Resolution Memorializing Congress to Propose an Amendment to the United States Constitution to Reverse the United States Supreme Court's Decision known as *Citizens United*

With respect to proposals on this agenda that are not initiated by Elections Enforcement, on behalf of my Commission, we support Proposed Joint Resolution No. 3. As you know, the *Citizens United* decision of the United States Supreme Court has created a great deal of confusion and chaos in the realm of campaign finance. We support legislative action that would bring clarity and ensure that the people of Connecticut can have full faith in their government.

House Bill 6290 An Act Concerning Donations Made From a Joint Checking Account

The Commission supports this effort to simplify treasurers' duties while still maintaining transparency and allowing for accurate allocation of contributions. To this end, we offer the following language:

9-606 (b) shall now provide as follows: (b) A contribution in the form of a check drawn on a joint bank account shall, for the purpose of allocation, be deemed to be a contribution made by the individual who signed the check, unless it is accompanied by a signed written certification, if any, from each of the holders of such joint bank account that indicates how such contribution should be differently allocated. If a check is signed by more than one individual, the total amount of the check shall be divided equally among the cosigners for the purpose of allocation,

except such contribution shall be allocated in accordance with the provisions of a written certification [statement], if any, from the holders of such joint bank account that indicates how such contribution should be differently allocated. If a committee receives an anonymous contribution, the campaign treasurer shall immediately remit the contribution to the State Elections Enforcement Commission for deposit in the General Fund.

House Bill 6632 An Act Concerning the Maximum Amount an Individual May Contribute to a Town Committee; and
Senate Bill 1120 An Act Concerning the Maximum Amount an Individual May Contribute to a State Central Committee of a Party

As a result of the Green Party litigation, in the middle of the 2010 election cycle the grant monies available to the gubernatorial candidates in certain circumstances were reduced by one third and the amounts available to General Assembly and other statewide candidates voluntarily participating in the CEP were reduced by two thirds. This loss of funding negatively impacts the Program by making those candidates who fear being targeted by negative independent expenditures or high spending opponents less willing to participate. Organization expenditures are one mechanism still available to support participating candidates facing such opposition.

House Bill 6632 and Senate Bill 1120 increase funding to party committees, which in turn can make organization expenditures to support targeted participating a candidates, from sources already permitted to contribute to those committees. The Commission supports legislative initiatives that support the Citizens' Election Program while protecting elections from the appearance of improper influence by special interests.

Senate Bill 1126 An Act Concerning Advertisement Books for State Central Committees; Senate Bill 1127 An Act Concerning Campaign Contributions by State Contractors; and House Bill 6289 An Act Concerning Weekly Campaign Financial Statements

The Commission strongly supports preserving the landmark legislative reforms passed by the legislature in 2005 in response to repeated corruption scandals; and therefore, opposes Senate Bill 1127 which would reinsert state contractors into campaign financing in Connecticut. The bill purports to make these changes in order to make the state contractor provisions similar to those now governing lobbyists. This proposal is both unnecessary under the Second Circuit's decision in the Green Party case as well as severely detrimental to the state's 2005 campaign finance reforms. It is important to keep in mind that State Contractors can already participate in the political campaign process by, for example, volunteering or attending campaign events. But they can't contribute money, because it creates an appearance of corruption and a possible avenue of influence as well.

The legislature passed the state contractor contribution prohibitions in the wake of *actual* corruption involving bribes, kickbacks and campaign contributions offered to state officials – including our governor - in exchange for lucrative state contracts. In 2010, the Second Circuit unanimously upheld the state contractor contribution bans because, unlike with the companion lobbyist provisions, there was a long history of scandals in Connecticut stemming from state contractor contributions. As the Second Circuit acknowledged "those scandals created a strong

appearance of impropriety in the transfer of *any* money between contractors and state officials—whether or not the transfer involved an illegal quid pro quo." *Green Party v. Garfield*, 616 F.3d 189 (2d Cir. 2010). Thus, the Court found that the General Assembly "faced a manifest need to curtail the appearance of corruption created by contractor contributions." Accordingly, we rise in opposition to this proposal which threatens to undo a significant part of Connecticut's pay to play reforms.

The Commission also opposes Senate Bill 1126, which would allow businesses to donate up to $250 to the state central party through the expansion of the ad book exception and House Bill 6289, which would severely reduce transparency in elections by eliminating until after the election all reporting of any expenditures and contributions made after September 30th. Especially after the Supreme Court's *Citizens United* case, it simply makes no sense to legislatively expand corporate influence in campaign finances here in Connecticut.